THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION Nos.17159 of 1998 & 10428 of 2000

Dated 29-08-2007

W.P.No.17159 of 1998
Between:
D.S.Satpute & others.

..... PETITIONERS

AND

The Chief Personnel Officer, South Central Railway, Railway Nilayam, Secunderabd & others.

.....RESPONDENTS

W.P.No.10428 of 2000
Between:
M.K.Lamani & another.

..... PETITIONERS

AND

The Chief Personnel Officer, South Central Railway, Railway Nilayam, Secunderabd & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION Nos.17159 of 1998 & 10428 of 2000

COMMON ORDER:

W.P.No.17159 of 1998 is filed questioning the action of the respondents in not permitting the petitioners to undergo training as Assistant Station Masters inspite of their being selected, vide proceedings of the first respondent dated
25-10-1995, along with other selected candidates, who were placed below the petitioners, as arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India.

The first petitioner was appointed as a Constable on
02-02-1993 and petitioners 2 and 3 were appointed as Constables on 01-05-1981 and 26-08-1985 respectively. The first respondent issued notification dated 19-07-1995 inviting applications from Group-C employees against 35% quota and the remaining 65% by direct recruitment, of which 15% was earmarked for serving graduate employees by way of a competitive examinations and the remaining 50% from the open market. The Railway Recruitment Board conducted examinations. According to the petitioners, though they submitted their applications, the Chief Security Commissioner, Railway Protection Force (respondent No.3) refused to receive any application making an endorsement on the notification that none of the R.P.F. staff were eligible for the post of Assistant Station Master. This Court, by order in W.P.M.P.No.23912 of 1995 dated 30-08-1995, directed the respondents to receive applications submitted by members of the Railway Protection Force. Petitioners would submit that, pursuant to the interim orders of this Court dated 30-08-1995, the third respondent directed his sub-ordinates to forward the applications of such of those graduate employees who were seeking appointment to the post of Assistant Station Masters, that their applications were forwarded and they were permitted to appear for the psychological and

medical tests. Petitioners would contend that, as they passed all the tests conducted by the respondents, they were selected to the post of Assistant Station Masters vide proceedings of the first respondent dated 25-10-1995.

Petitioners would submit that the first batch of Railway Protection Force employees were sent for training to the second respondent training centre, but, however, they were sent back to their original posts vide proceedings of the second respondent dated 04-11-1995. Certain employees, who were asked to join their original posts, and were not permitted to undergo training as Assistant Station Masters, filed W.P.No.25872 of 1995 and this Court directed that the petitioners therein be permitted to undergo Assistant Station Masters Training. Petitioners herein would claim to be similarly situated to the petitioners in W.P.No.25872 of 1995. They would contend that W.P.No.25872 of 1995 was disposed of on
04-07-1997 and, pursuant to the directions of this Court, the respondents, while permitting the Railway Protection Force Personnel to undergo training as Assistant Station Masters vide proceedings dated 03-10-1997, had put in a rider that it would be applicable only in respect of applications received before the last date and that only such candidates would be sent for training. Petitioners would contend that, since the third respondent objected to RPF personnel submitting their applications pursuant to the notification issued by the first respondent, it was only pursuant to the interim directions of this Court, in W.P.M.P.No.23912 of 1995 dated 30-08-1995, that R.P.F. Personnel were held eligible to apply and as the last date for receipt of applications was 31-08-1995, only those candidates, residing at Hyderabad/Secunderabad, submitted their applications whereas others, including the petitioners, residing in far off places had sent their applications through proper channel and that the applications were received after the last date for no fault of theirs. Petitioners would contend that, though they had submitted their applications within time, there was delay in transit and that the action of respondents in not permitting them to undergo training on the ground that their

applications were not received in time at the headquarters was arbitrary, illegal and in violation of Articles 14 and 16 of the Constitution of India. Petitioners would contend that they were successful in psycho test and the medical examination, that while the others had been sent for training they were not and that the action of the respondents, in not permitting them to undergo training as Assistant Station Masters was illegal. This Court, by order in W.P.M.P.No.20442 of 1998 dated 09-07-1998, had directed the respondents to permit the petitioners to undergo training as Assistant Station Masters along with other selected candidates pending further orders in the writ petition. While all the three petitioners underwent training, the first petitioner Sri D.S.Satpute was found unsuitable, whereas petitioners 2 and 3 successfully completed their training as Assistant Station Masters.

Since the petitioners 2 and 3 herein were not given posting orders as Assistant Station Masters, even though they were selected and had completed training as Assistant Station Masters, they filed W.P.No.10428 of 2000 and this Court, by order in W.P.M.P.No.13272 of 2000 dated 23-04-2001, directed the respondents to issue necessary posting orders, pursuant to the proceedings of the Divisional Personnel Officer, South Central Railway, Hublli dated 06-08-1999, appointing the petitioners as Assistant Station Masters in accordance with law within two months from the date of receipt of the order, as the petitioners had undergone initial training in Batch No.C.108 during the period from 26-09-1998 to 24-02-1999 and were declared to have passed. As a result of the interim order passed by this Court both Sri M.K.Lamani and Sri Y.B.Sangapur were appointed as Assistant Station Masters, vide office order No.T/22/2001 dated 12-06-2001. It is not in dispute that ever since 12-06-2001 they continue to work as Assistant Station Masters.

In their counter affidavit, in W.P.No.17159 of 1998, respondents state that the petitioners were initially appointed in railway service as constables, that in 1995 the General Manger took a decision to fill up 400 vacancies of Assistant Station Masters as one time dispensation,

that applications were invited from eligible volunteers from amongst serving graduates of Group 'C' and 'D' cadres irrespective of the department subject to certain terms specified therein. Since Railway Protection Force personnel, were members of the Armed force, the Chief Security Commissioner, the Head of the Department of Railway Protection Force, decided not to permit Railway Protection Force personnel to apply for the post of Assistant Station Masters and, as a result, the applications submitted by Railway Protection Force Personnel, for the post of Assistant Station Masters, were detained by the Chief Security Commissioner. Aggrieved thereby, some of the Railway Protection Force employees moved this Court seeking a direction to the Chief Security Commissioner to forward their applications, if necessary, by extending the last date, and that this Court, while directing the third respondent to forward the petitioners' applications, had further directed that their results not be published till the final outcome of W.P.No.19521 of 1995. Respondents contend that this Court did not concede to the petitioners request for extension of the last date for submission of applications despite such a relief having been sought for. It is stated that the Chief Security Commissioner, vide proceedings dated 31-08-1995, had forwarded a list of 40 Railway Protection Force employees which did not include the names of the petitioners, that the Chief Security Commissioner, vide proceedings dated 07-09-1995, on the basis of general directions issued by the first respondent on 25-08-1995, had instructed all his subordinates to examine the medical fitness of all those Railway Protection Force personnel, who had applied for the post of Assistant Station Masters and, vide proceedings dated 15-09-1995, directed them to appear for the psychological test scheduled to be held at Zonal Training Centre, Secunderabad on 25-09-1995. In compliance therewith, the Divisional Security Commissioner, Railway Protection Force, Hubli, relieved 10 Railway Protection Force personnel who were found medically fit, including the petitioners, to report to the Principal, Zonal Training Centre, Secunderabad on 25-09-1995. Respondents would state that the fact, that the petitioners had

submitted their applications for the post of Assistant Station Masters after the cut-off date, came to light later and inadvertently, without verifying whether the petitioners had submitted their applications within the period prescribed, the Divisional Security Commissioner, Hubli, had not only permitted them to undergo the psychological and medical tests but had also, on their being found psychologically and medically fit, sent them for training as Assistant Station Masters. Respondents would contend that, since the petitioners did not submit their applications within time, they were not entitled to be sent for training as Assistant Station Masters, that, despite the interim orders of this Court in W.P.M.P.No.23912 of 1995 dated 30-08-1995 not to publish the results, the respondents had inadvertently published and declared the results of all such candidates who had passed the psychological test, as a result of which the petitioners were directed to undergo the training as Assistant Station Masters at the Zonal Centre. Respondents would submit that before they were relieved, the erroneous action of the respondents, in publishing the results, was detected and the respective officers were suitably advised not to subject these candidates for training as Assistant Station Masters till the final outcome of W.P.No.19521 of 1995 and, as a consequence, the petitioners were directed to report back to the controlling officer. Respondents would refer to W.P.No.25872 of 1995, filed by a few other employees, which was disposed of on 04-07-1997, directing the respondents to consider their cases favourably. Respondents would state that, accordingly, the petitioners and 43 others were sent for training vide proceedings dated 03-10-1997. Respondents would contend that the mere fact, that the petitioners had passed the medical and psychological tests, would not confer any right on them to be sent for training as Assistant Station Masters as they failed to submit their applications before the cut-off date i.e. 31-08-1995 and it was only by inadvertence that they were subjected to medical and psychological tests. Respondents would contend that though they were found successful in the psychological and medical tests, the petitioners claim for promotion to the post of Assistant Station Masters, on par

with other Railway Protection Force personnel, was not maintainable. Respondents would deny as false the contention that the petitioners were not responsible for the delay in submitting their applications.

In their counter affidavit, in W.P.No.10428 of 2000, respondents would contend that the writ petition is liable to be dismissed in limini since the writ petitioners did not submit their applications before the cut-off date i.e. 31-08-1995. Respondents would contend that the dates affixed in the applications submitted by the petitioners seeking appointment as Assistant Station Masters, copies of which were enclosed along with the counter affidavit, would show that they had submitted their applications on 09-07-1997 and 11-09-1995 respectively, which would belie their contention that they had submitted their applications before the cut-off date of 31-08-1995 and, though the petitioners were ineligible to appear for selection as they had not submitted their applications withn time, they were erroneously subjected to the selection process and, on detecting the irregularity, they were directed to report back to the Headquarters and it was only in compliance with the interim orders of this Court were they sent for training, declared as qualified on their successful completion of training, given posting orders vide office order dated 12-06-2001 and that they are now presently working as Assistant Station Masters.

The dispute in both these writ petitions revolves around the question whether the petitioners had submitted their applications for appointment to the post of Assistant Station Masters within or beyond the cut-off date i.e. 31-08-1995. While the respondents claim that the applications were belatedly made, the petitioners contend that, though they had submitted their applications in Hubli within time, applications were subsequently forwarded in September, 1995 only when the third respondent had so directed.

While examining the application forms, enclosed along with the counter affidavit, this Court noted that the application of Sri M.K.Lamani did not contain any date, that the applications of Sri D.S.Satpute & Sri Y.B.Sangapur were dated 09-09-1995 and 11-09-

1995 respectively, that there were overwritings in these xerox copies and the year 1997 had been corrected as 1995 or vice-versa. This Court, on taking note of the proceedings of the Divisional Security Commissioner (RPF), Hubli, dated 12-09-1997, wherein a reference was made to the CSC/SC message dated 09-09-1997, that the application forms of eight applicants were forwarded, by order dated 08-08-2007, directed the Chief Personnel Officer, South Central Railway, to place before this Court the original application forms of the petitioners, the records pertaining to the message dated 09-09-1997 and the proceedings dated 26-08-1997.

In compliance with the orders of this Court dated 08-08-2007, Sri R.S.Murthy, learned standing counsel for the Railways, would place certain records before this Court. Learned standing counsel would fairly submit that the respondents had informed him that the original records were not traceable and that, in such circumstances, he is not in a position to place the original applications of the petitioners before this Court. Learned standing counsel would, however, refer to the proceedings of the Chief Security Commissioner dated 23-10-1997 wherein it is stated that the Railway Protection Force had submitted applications of certain employees on the dates shown in the said proceedings. The proceedings dated 23-10-1997 indicates that Sri M.K.Lamani & Sri Y.B.Sangapur had submitted their applications on 12-09-1995 and Sri D.S.Satputte had submitted his application on 13-09-1995. Learned standing counsel would submit that it is evident therefrom that the applications were submitted by the petitioners only after the cut-off date i.e. 31-08-1995. Learned standing counsel would contend that prescription of a cut-off date by the South Central Railway for submission of applications to the post of Assistant Station Masters, as also the decision of the Chief Security Commissioner, Railway Protection Force not to permit Railway Protection Force Personnel to apply for the post of Assistant Station Masters, were matters of policy and that this Court, in exercise of its extraordinary jurisdiction under

Article 226 of the Constitution of India, would not interfere in such matters. Learned standing counsel would submit that, it is only in view of the interim orders passed by this Court, Railway Protection Force Personnel were permitted to submit their applications to the post of Assistant Station Masters and it was only those candidates who had submitted their applications before the cut-off date i.e. 31-08-1995 who were entitled to participate in the selection process for appointment to these posts. Learned standing counsel would submit that, since the petitioners had submitted their applications after the cut-off date i.e.
31-08-1995 i.e. on 12-09-1995 and 13-09-1995 respectively, they were not entitled to apply or participate in the selection process for appointment to the posts of Assistant Station Masters.

On a query from this Court as to whether any useful purpose would be served in now canceling their appointment as Assistant Station Masters and reverting them back as Railway Protection Force Constables, learned standing counsel would fairly submit that the very fact that these persons are not associated with the force for the past six years would render them ineffective and incapable of discharging the duties required to be performed by members of a highly disciplined force such as the Railway Protection Force. Learned standing counsel would contend that he is more concerned about the scope of interference by Courts, in such matters of policy, which has resulted in members of the Railway Protection Force being permitted to apply for and be appointed to the civilian posts of Assistant Station Masters though they are members of an armed force under the Railway Protection Force Act.

Sri J.M.Naidu, learned counsel for the petitioners, would reiterate that the petitioners had, in fact, submitted their applications in time and it was only in view of the decision taken by the Chief Security Commissioner that their applications were not forwarded from Hubli, (where they were working as constables), to Secunderabad. Learned counsel would submit that, pursuant to the interim orders of this Court dated 30-08-1995, employees of the Railway Protection

Force, who were residing in and around Secunderabad, were in a position to submit their applications to the Chief Personnel Officer, South Central Railway, whereas the petitioners residing far away at Hubli in the State of Karnataka were not in a position to do so. With regards the proceedings of Chief Security Commissioner dated 23-10-1997, wherein reference is made to the receipt of the applications dated 12-09-1995 and 13-09-1995 respectively, learned counsel would submit that while they had, in fact, submitted their applications before the cut-off date i.e. 31-08-1995, the said letter records the endorsement made by the officers thereupon which is dated 12-09-1995 and 13-09-1995 respectively and that, if the original applications are made available to this Court, it would be evident that they had submitted their applications within time.

While the submission of Sri R.S.Murthy, learned standing counsel for the Railways, that the prescription of a cut-off date and prohibiting Railway Protection Force personnel from participating in the selection process for appointment to the civilian posts of Assistant Station Masters, are matters of policy and would not, ordinarily, be interfered with by this Court under Article 226 of the Constitution of India, save constitutional infirmities, is well founded, the peculiar facts and circumstances of the present case would justify exercise of restraint by this Court and to refrain from interfering with the posting given to the petitioners. The petitioners had submitted their applications to the post of Assistant Station Masters along with several others who, despite being members of the Railway Protection Force, were permitted to participate in the selection process pursuant to the interim orders of this Court. The petitioners were also permitted later and were found successful in the medical test and psychological tests held. They were also permitted to participate in the training course for Assistant Station Masters, which they successfully completed. Subsequent to the written test they appeared and passed the viva-voce test held for being considered for appointment as Assistant Station Masters. Only thereafter were the petitioners issued

posting orders as Assistant Station Masters on 12-06-2001 and they have been working as such for the past six years. While a detailed examination of their eligibility to participate in the selection process may have been justified, in case it was established that they had submitted their applications after the cut-off date i.e. 31-08-1995, the original application forms have not been furnished despite a specific direction by this Court in its order dated 08-08-2007. According to the respondents, the records including the original applications are not traceable. In such circumstances this Court is not in a position to conclude that the petitioners had, indeed, submitted their applications after the cut-off date i.e. 31-08-1995. In any event, even according to the proceedings of the Chief Security Commissioner dated 23-10-1997, the applications were made on 12-09-1995 and 13-09-1995 respectively less than a fortnight after the cut-off date. This, coupled with the fact that the petitioners had passed the medical and psychological tests, underwent training and had passed the written test and viva-voce held thereafter, that they were given posting orders as Assistant Station Masters on 12-06-2001 and are working in the said post for the past six years would necessitate a quietus being given thereto. As fairly submitted by Sri R.S.Murthy, learned standing counsel for the Railways, their ceasing to be a part of the Railway Protection Force, for the past six years, would render them incapable of carrying out the duties being discharged by members of the Railway Protection force. No useful purpose would be served in examining this matter any further at this length of time. Suffice to hold that, in the peculiar facts and circumstances of this case, I do not consider it necessary to go into the question as to whether the members of the Railway Protection Force are entitled to participate in the selection process for appointment to the civilian posts of Assistant Station Masters. Leaving this question open to be decided in an appropriate case, as the petitioners were posted as Assistant Station Masters vide proceedings dated 12-06-2001 and have been working in the said post for the past more than six years, their selection and appointment to the said post does not call for interference.

The writ petitions are accordingly disposed of. No costs.

29-08-2007

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